

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: November 17, 2022

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RANDALL BAZELL,	*	Unpublished
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	*	
Petitioner,	*	No. 20-742V
	*	
v.	*	Special Master Gowen
	*	
SECRETARY OF HEALTH	*	Decision on Stipulation; Tdap;
AND HUMAN SERVICES,	*	Guillain-Barre Syndrome.
	*	
Respondent.	*	
* * * * *	*	

Alison H. Haskins, Maglio Christopher and Toale, PA, Sarasota, FL, for petitioner.
Mary Eileen Holmes, Department of Justice, Washington, D.C., for respondent.

DECISION ON STIPULATION¹

On June 22, 2020, Randall Bazell (“petitioner”) filed a claim in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). Petitioner alleged as a result of receiving a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine on September 18, 2018, he suffered Guillain-Barre Syndrome (“GBS”). *Id.*

On November 17, 2022, respondent filed a stipulation providing that a decision should be entered awarding compensation to petitioner. Stipulation (ECF No. 44). Respondent denies that the Tdap vaccine caused petitioner’s alleged GBS, any other injury, or his current condition. *Id.* at ¶ 6. Nevertheless, maintaining their respective positions, the parties now agree that the issues

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). “An objecting party must provide the court with a proposed redacted version of the decision.” *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes.** *Id.*

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

between them shall be settled and that a decision should be entered awarding compensation to the petitioner according to the terms of the stipulation attached hereto as Appendix A. *Id.* at ¶ 7.

The stipulation provides that respondent agrees to pay the following

- A. A lump sum of \$1,473,831.76 in the form of a check payable to petitioner; and**
- B. A lump sum of \$1,168.24,³ representing reimbursement of a Medicaid lien for services rendered to petitioner by the state of Ohio, in the form of a check payable jointly to petitioner and the Treasurer, State of Ohio:**

**Ohio Tort Recovery Unit
5475 Rings Road Suite 200
Dublin, OH 43017**

Petitioner agrees to endorse this check to the Treasurer, State of Ohio.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.⁴

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Ohio may have against any individual as a result of any Medicaid payments the Ohio Program has made to or on behalf of Randall Bazell as a result of his alleged vaccine-related injury suffered on or about September 27, 2018, under Title XIX of the Social Security Act, see 42 U.S.C. § 300aa-15(g),(h).

⁴ Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

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RANDALL BAZELL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 20-742V
Special Master Gowen
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received the Tdap immunization on September 18, 2018.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he suffered Guillain-Barre Syndrome (“GBS”) as a result of receiving the Tdap vaccine. He further alleges that he has experienced residual effects of his alleged injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.

6. Respondent denies that the Tdap vaccine caused petitioner's alleged GBS, any other injury, or his current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- A. A lump sum of \$1,473,831.76 in the form of a check payable to petitioner; and
- B. A lump sum of \$1,168.24,¹ representing reimbursement of a Medicaid lien for services rendered to petitioner by the State of Ohio, in the form of a check payable jointly to petitioner and the Treasurer, State of Ohio:

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Dublin, OH 43017

Petitioner agrees to endorse this check to the Treasurer, State of Ohio.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to

¹ This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Ohio may have against any individual as a result of any Medicaid payments the Ohio Program has made to or on behalf of Randall Bazell as a result of his alleged vaccine-related injury suffered on or about September 27, 2018, under Title XIX of the Social Security Act, see 42 U.S.C. § 300aa-15(g), (h).

42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely

brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the Tdap vaccination administered on September 18, 2018, as alleged by petitioner in a petition for vaccine compensation filed on or about June 22, 2020, in the United States Court of Federal Claims as petition No. 20-742V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.


17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Tdap vaccine caused petitioner's GBS, any other injury, or his current condition.

END OF STIPULATION

[illegible]

Respectfully submitted,

PETITIONER:


DocuSigned by:
US82UB84BFAB434

RANDALL BAZELL

**ATTORNEY OF RECORD FOR
PETITIONER:**


ALISON H. HASKINS
Maglio Christopher and Toale, PA
1605 Main Street, Suite 710
Sarasota, FL 34236
(888) 952-5242
ahaskins@mctlawyers.com


**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

George R.
Grimes -S14



Digitally signed by George R.
Grimes -S14
Date: 2022.10.25 11:41:46 -04'00'

CDR GEORGE REED GRIMES, MD, MPH
Director, Division of Injury
Compensation Programs
Health Systems Bureau
Health Resources and Services
Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane, 08N146B
Rockville, MD 20857

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


HEATHER L. PEARLMAN
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Torts Branch
Civil Division
U.S. Department of Justice
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**ATTORNEY OF RECORD FOR
RESPONDENT:**



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Trial Attorney
Torts Branch, Civil Division
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Washington, DC 20044-0146
Tel: (202) 616-5022
Mary.E.Holmes@usdoj.gov

Dated: 11/17/2022

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END OF STIPULATION

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Respectfully submitted,

PETITIONER:


DocuSigned by:
US82UB84BFAB434

RANDALL BAZELL

**ATTORNEY OF RECORD FOR
PETITIONER:**


ALISON H. HASKINS
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George R.
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Date: 2022.10.25 11:41:46 -04'00'

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